

IN THE COURT OF APPEALS OF IOWA

No. 3-1171 / 13-0664
Filed January 9, 2014

**IN RE THE MARRIAGE OF PATRICK M. KAPPES
AND MONICA M. KAPPES**

**Upon the Petition of
PATRICK M. KAPPES,**
Petitioner-Appellee,

**And Concerning
MONICA M. KAPPES, n/k/a MONICA M. MCCARTY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Marsha M.
Beckelman, Judge.

Monica McCarty appeals the amount of the district court's spousal support
award ordered in its decree dissolving her marriage to Patrick Kappes.

AFFIRMED AS MODIFIED.

Stephen B. Jackson Sr. and Amy L. Reasner of Lynch Dallas, P.C., Cedar
Rapids, for appellant.

James L. Sines of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

Monica McCarty appeals the amount of the district court's spousal-support award ordered in its dissolution decree. She asserts she should have been awarded \$2000 rather than \$1000 per month. Upon our de novo review, we agree and find the amount of spousal support awarded to Monica under the circumstances of this case is inequitable. We therefore affirm as modified.

I. Background Facts and Proceedings.

Patrick and Monica were married in 1996. This was a second marriage for both parties, and they have no children together, though both have children from prior marriages. At the time of trial, Patrick was fifty-nine and Monica was sixty-one.

Patrick filed a petition for dissolution of marriage in 2010. Trial on the petition was held in April 2012, and a decree of dissolution issued the following March. Although Monica sought a spousal-support award of \$2000 per month until she reaches age sixty-six, the district court awarded her \$1000 per month in spousal support as proposed by Patrick, for the duration requested by Monica. Monica now appeals the amount of that award.

II. Scope and Standards of Review.

We review dissolution of marriage cases de novo. *In re Marriage of McDermott*, 827 N.W.2d 671, 676 (Iowa 2013). We review the entire record and adjudicate rights anew. *Id.* Although we credit the district court's findings—particularly concerning witness veracity—we are not bound by them. *Id.* Even though our review is de novo, we accord the trial court considerable latitude in determining spousal support awards. *In re Marriage of Schenkelberg*, 824

N.W.2d 481, 486 (Iowa 2012). We will disturb the district court's ruling only where there has been a failure to do equity. *Id.*

III. Discussion.

Spousal support, commonly called alimony, is a stipend to one spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). No former spouse enjoys an "absolute right" to spousal support; any award depends upon the circumstances of the particular case. *Schenkelberg*, 824 N.W.2d at 486. We note that, in determining the appropriate spousal-support award, past cases "are of little value." *Id.*

Traditional alimony is payable for life or for as long as a spouse is incapable of self-support. *Id.* at 487. The monthly amount and duration of spousal support "is always calculated equitably based on 'all of the following' factors contained in Iowa Code section 598.21A(1)." *Id.* at 486 (citation omitted).

These factors include:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to section 598.21.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.

h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21A(1) (2009).

Observing the wide latitude afforded the district court in determining a spousal-support award, we find the court failed to do equity in this case. Patrick is now sixty-years old and in good health. He has maintained his employment with a national insurance company for thirty-seven years, and his income grew substantially during the parties' sixteen-year marriage, as did his retirement savings and investments. Patrick and Monica moved many times during their marriage in furtherance of Patrick's career, which resulted in Monica starting over each time they moved. At the time of trial, Patrick's annual salary with bonus was approximately \$246,000.

In contrast, Monica is now sixty-two-years old and in poor health. She suffers from a variety of ailments and conditions, including plantar fasciitis, which limits her ability to stand for long periods of time, and severe arthritis and bone death in her left wrist, resulting in extreme pain when using that hand. At the time of trial, her doctor had not released her to go back to her employment as a bank teller, where she earned twelve dollars an hour, because further trauma to her wrist would cause more damage. Monica is also a breast cancer survivor with the cancer currently in remission; she took her last medication for the cancer in 2010. However, her chemotherapy resulted in other medical conditions including high cholesterol, requiring regular medication. Although Monica has

been employed off and on during the marriage, given her current medical disability, she has no reasonable prospects of obtaining or maintaining employment. Her only source of income at present is disability insurance payments of approximately \$1384 per month and IPERS retirement of approximately \$308 per month. In addition to paying for her medications, Monica will also have to pay for her own medical insurance of approximately \$405 a month and the insurance's deductible.

Patrick also received a substantial property award from the court because of the premarital agreement. "It would be improper to increase the spousal support award solely to penalize him for the premarital agreement." *Schenkelberg*, 824 N.W.2d at 487. Nevertheless, "in calculating spousal support, it is proper to look at the assets each party received . . . to determine the income potential of the property distributed to each party." *Id.* In this case, Patrick received assets in excess of a million dollars, including several properties that will continue to generate substantial income. Conversely, Monica's award was considerably less, and the income generated by the rental property she was awarded generally only covered the expenses associated with the property. Patrick's assets, together with his wages, will give Patrick the ability to pay \$2000 per month for the four years left until Monica turns sixty-six.

After considering all relevant factors, we conclude that the district court's spousal support award to Monica in the amount of \$1000 per month is inequitable. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997) ("Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can

be predicted with some reliability.”). Accordingly, we modify the district court’s spousal-support award, increasing it to \$2000 per month. The decree is affirmed in all other respects. Costs on appeal are assessed to Patrick.

AFFIRMED AS MODIFIED.